

The Office Action rejects claims 1-54 under 35 U.S.C 103(a) as unpatentable over U.S. Patent No. 5,819,033 to Caccavale, hereafter Caccavale, in view of Applicant Admitted Prior Art (AAPA), hereafter AAPA.

This rejection is erroneous because Caccavale lacks all the steps of independent claim 1 and all of the means of independent claims 19 and 37, which all relate to a plurality of cooperating computers. Caccavale discloses a system for improving the performance level of a network server by dynamically adjusting the parameters of the server in response to changes in the workload of the server. Caccavale's disclosure concerns only a single server and not the management of a plurality of servers. The Examiner admits that Caccavale's disclosure is limited to adjusting the performance level of a single server. Therefore, Caccavale lacks all of the steps or means that each relate to a plurality of cooperating computers as recited in independent claims 1, 19 and 37.

The Examiner defines AAPA as the following statement at page 1, lines 17-19, of the specification:

“Prior art methods of policy management have required advance knowledge of how much CPU time or memory an application needs to run to efficiently assign the application in a cluster of computers and take advantage of the cluster resources.”

This statement does not disclose or teach at least steps (b), (c) and (d) of independent claim 1 and at least the second, third and fourth means of independent claims 19 and 37. AAPA merely refers to the policy management having advance knowledge of how much CPU time or memory needed for the running of an application in order to efficiently assign the application in a cluster of computers. AAPA does not disclose or teach receiving performance related values of the cluster of computers, deriving performance related metrics from the performance values or changing any identified set of computers based on the performance related metrics as claimed in independent claims 1, 19 and 37.

Since both Caccavale and AAPA lack at least steps (b), (c) and (d) of independent claim 1 and the second, third and fourth means of independent claims 19 and 37 as discussed above, any combination of Caccavale and AAPA will also not have steps (b), (c) and (d) of independent claim 1 and the second, third and fourth means of independent claims 19 and 37. Therefore, the conclusion of obviousness is erroneous.

The rejection is also erroneous because there is no motivation for one of ordinary skill in the art to combine Caccavale and AAPA. The Office Action suggestion to use Caccavale in combination with AAPA is improperly based on the hindsight of Applicants' disclosure. Such hindsight reconstruction of the art cannot be the basis of a rejection under 35 U.S.C. 103. The prior art itself must suggest that modification or provide the reason or motivation for making such modification. In re Laskowski, 871 F.2d 115, 117, 10 USPQ 2d 1397, 1398-1399 (CAFC, 1989). "The invention must be viewed not after the blueprint has been drawn by the inventor, but as it would have been perceived in the state of the art that existed at the time the invention was made." Sensonic Inc. v. Aerosonic Corp. 38 USPQ 2d 1551, 1554 (CAFC, 1996), citing Interconnect Planning Corp. v. Feil, 774 F. 2d 1132, 1138, 227 USPQ 543, 547 (CAFC, 1985).

With respect to claims 2, 20 and 38, Caccavale is referring to the geometry of a data cache being of same or different sizes which in no way is the same as a reference to heterogeneous computing resources.

With respect to claims 3, 21 and 39, Caccavale again is referring to the size of a data structure and not adding and removing computing resources.

With respect to claims 4, 5, 22, 23, 40 and 41, the cited passage at column 5, lines 21-25, does not teach changing the set of cooperating computer resources independently of any architecture or operating system specific metrics of the computers.

With respect to claims 7, 8, 25, 26, 43 and 44, the cited passages of Caccavale do not in any way teach steps (e) and (f).

With respect to claims 9-18, 28-35 and 46-54, Caccavale lacks all of the steps (a) through (d) as discussed above and, therefore, cannot teach the features of these steps as recited in these claims. Moreover, these claims contemplate a method for aggregating and updating statistics that results in an improvement by reducing the amount of data storage required to maintain the statistics and by reducing the amount of CPU usage necessary to compute the statistics. Neither Caccavale nor AAPA contemplates these types of improvements or results in these types of improvements

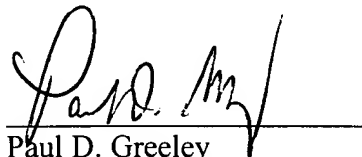
For the reasons set forth above, it is submitted that the rejection of claims 1-54 under 35 U.S.C. 103(a) is erroneous and should be withdrawn.

The Office Action cites U.S. Patent No. 5,276,877 to Friedrich et al. that was not applied in the rejections of the claims. This patent has been reviewed, but is believed to be inapplicable to the claims.

It is respectfully requested for the reasons set forth above that the rejection under 35 U.S.C. 103(a) be withdrawn, that claims 1-54 be allowed and that this application be passed to issue.

Respectfully Submitted,

Date: 11-24-04



Paul D. Greeley
Reg. No. 31,019
Attorney for Applicants
Ohlandt, Greeley, Ruggiero & Perle, L.L.P.
One Landmark Square, 10th Floor
Stamford, CT 06901-2682
(203) 327-4500